Supreme Court, U.S.
FILED
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No. 03-407

In the
Supreme Court of the United States

JUDGE JOHN F. KOWALSKI,
JUDGE WILLIAM A CRANE,
AND JUDGE LYNDA L. HEATHSCOTT,

Petitioners,

JUDGE DENNIS C. KOLENDA,

Respondent

v

JOHN CLIFFORD TESMER, CHARLES CARTER,
ALOIS SCHNELL, ARTHUR M. FITZGERALD, AND
MICHAEL D. VOGLER,

Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

JOINT APPENDIX

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Petition for Certiorari filed September 12, 2003
Certiorari granted January 20, 2004

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US Court of Appeals for the Sixth Circuit
Court of Appeals Docket #: 00-1824 Filed: 7/26/00
Nsuit: 3440 Civil Rights: Other
Tesmer, et al v. Granholm, et al
Appeal from: Eastern District of Michigan at Bay City

- -

Case type information:
1) Civil
2) private
3) federal question

- -

Lower court information:

District: 0645-1 : 00-10082
Court Reporter: Barbara Chatman
Trial Judge: Victoria A. Roberts, District Judge
Court Reporter: Shaun Quinn
Trial Judge: David M. Lawson, District Judge
Date Filed: 3/2/00
Date order/judgment: 7/3/00
Date NOA filed: 7/14/00

- -

Fee status: paid

- -

* * *

Current cases:

	Lead	Member	Start	End
Related:				
	00- 1824	00- 1845	8/8/02	8/13/03

* * *

- -

00-1824 Tesmer, et al v. Granholm, et al

JOHN TESMER; CHARLES CARTER; ALOIS SCHNELL, on behalf of themselves and all similarly situated individuals; ARTHUR M. FITZGERALD; MICHAEL D. VOGLER

Plaintiffs - Appellees

v.

JENNIFER M. GRANHOLM, Attorney General;

Defendant

JOHN F. KOWALSKI, Judge; WILLIAM A. CRANE, Judge; LYNDA L.
HEATHSCOTT, Judge, in their official capacities, individually and as representatives of a class of similarly situated circuit court judges

Defendants - Appellants

* * *

00-1824 Tesmer, et al v. Granholm, et al

7/26/00 Civil Case Docketed. Notice filed by Appellee Arthur M. Fitzgerald [sic, Should be: Appellant John F. Kowalski,], Appellant William A. Crane, Appellant Lynda L. Heathscott. Transcript needed: y (dtk)

* * *

8/28/00 Appellant MOTION filed to stay district court proceeding . Motion filed by Judy E. Bregman for Appellant Dennis C. Kolenda in 00-1845 . Certificate of service date 8/24/00 [00-1845] (dtk)

* * *

11/1/00 ORDER filed granting motion to stay district court proceeding and the June 30, 2000, injunction against Judge Kolenda is stayed pending further

court order [2212095-1] filed by Judy E. Bregman [00-1845]. Ralph B. Guy, Richard F. Suhrheinrich, and Karen N. Moore, Circuit Judges. (dtk) (ert)

* * *

7/2/02 JUDGMENT: Injunction of the district court is DISSOLVED, the district court's declaratory judgment is VACATED and the case is REMANDED with instructions to enter judgment in favor of defendants [00-1824, 00-1845] (ert)

* * *

7/11/02 PETITION for en banc rehearing filed by David A. Moran for Appellees Michael D. Vogler, Arthur M. Fitzgerald, Alois Schnell, Charles Carter, John Tesmer. Certificate of service date 7/10/02. [00-1824, 00-1845] (blh)

* * *

9/20/02 ORDER filed granting petition for en banc rehearing [2582617-1] filed by David A. Moranan [sic] to reinstate appeal. The previous decision and judgment of this court is vacated,the mandate is stayed. [00-1824, 00-1845] Boyce F. Martin, Chief Circuit Judge; Danny J. Boggs, Alice M. Batchelder, Martha C. Daughtrey, Karen N. Moore, R. G. Cole, Eric L. Clay, Ronald L. Gilman, Julia S. Gibbons, Circuit Judges. (blh)

* * *

6/17/03 OPINION filed : The district court's judgment is AFFIRMED IN PART and REVERSED IN PART. Decision for publication pursuant to local rule 206 [00-1824, 00-1845] . Boyce F. Martin, Chief Authoring Judge in which Danny J. Boggs, Martha C. Daughtrey, Karen N. Moore, R. G. Cole, Eric L. Clay, and Ronald L. Gilman joined. John M. Rogers delivered a separate opinion concurring and dissenting in part, in which , Eugene E. Siler, Alice M. Batchelder and Julia S. Gibbons joined. Alan E. Norris delivered a separate dissenting opinion in

which Eugene E. Siler, Alice M. Batchelder, and Julia S. Gibbons, joined. (dtk)

6/17/03 JUDGMENT : AFFIRMED in part and REVERSED in part. (dtk)

7/9/03 MANDATE ISSUED with no cost taxed [00-1824] (rgf)

* * *

General Docket
US Court of Appeals for the Sixth Circuit
Court of Appeals Docket #: 00-1845 Filed: 7/31/00
Nsuit: 3440 Civil Rights: Other
Tesmer, et al v. Granholm, et al
Appeal from: Eastern District of Michigan at Bay City

- -

Case type information:
1) Civil
2) private
3) federal question

- -

Lower court information:

District: 0645-1 : 00-10082
Court Reporter: Shaun Quinn
Court Reporter: Barbara Chatman
Trial Judge: Victoria A. Roberts, District Judge
Trial Judge: David M. Lawson, District Judge
Date Filed: 3/2/00
Date order/judgment: 7/3/00
Date NOA filed: 7/18/00

- -

Fee status: paid

- -

* * *

Current cases:

	Lead	Member	Start	End
Related:				
	00- 1824	00- 1845	8/8/02	8/13/03

* * *

00-1845 Tesmer, et al v. Granholm, et al

7/31/00 Civil Case Docketed. Notice filed by Appellant Dennis C. Kolenda. Transcript needed: y (dtk)

* * *

8/28/00 Appellant MOTION filed to stay district court proceeding . Motion filed by Judy E. Bregman for Appellant Dennis C. Kolenda in 00-1845 . Certificate of service date 8/24/00 [00-1845] (dtk)

* * *

11/1/00 ORDER filed granting motion to stay district court proceeding and the June 30, 2000, injunction against Judge Kolenda is stayed pending further court order [2212095-1] filed by Judy E. Bregman [00-1845] . Ralph B. Guy, Richard F. Suhrheinrich, and Karen N. Moore, Circuit Judges. (dtk)

* * *

7/2/02 OPINION filed: injunction issued by the district court is DISSOLVED, the district court's declaratory judgment is VACATED and the case is REMANDED with instructions to enter judgment in favor of defendants [00-1824, 00-1845], decision for publication pursuant to local rule 206 [00-1824, 00-1845] . Alan E. Norris, Authoring Judge, Eugene E. Siler, Alice M. Batchelder, Circuit Judges. (ert)

* * *

7/11/02 PETITION for en banc rehearing filed by David A. Moran for Appellees Michael D. Vogler, Arthur M. Fitzgerald, Alois Schnell, Charles Carter, John Tesmer. Certificate of service date 7/10/02. [00-1824, 00-1845] (blh)

* * *

9/20/02 ORDER filed granting petition for en banc rehearing [2582617-1] filed by David A. Moranan [sic] to reinstate appeal. The previous decision and judgment of this court is vacated,the mandate is stayed. [00-1824, 00-1845] Boyce F. Martin, Chief Circuit Judge; Danny J. Boggs, Alice M. Batchelder, Martha C. Daughtrey, Karen N. Moore,

R. G. Cole, Eric L. Clay, Ronald L. Gilman, Julia S. Gibbons, Circuit Judges. (blh)

* * *

6/17/03 OPINION filed : The district court's judgment is AFFIRMED IN PART and REVERSED IN PART. Decision for publication pursuant to local rule 206 [00-1824, 00-1845] . Boyce F. Martin, Chief Authoring Judge in which Danny J. Boggs, Martha C. Daughtrey, Karen N. Moore, R. G. Cole, Eric L. Clay, and Ronald L. Gilman joined. John M. Rogers delivered a separate opinion concurring and dissenting in part, in which , Eugene E. Siler, Alice M. Batchelder and Julia S. Gibbons joined. Alan E. Norris delivered a separate dissenting opinion in which Eugene E. Siler, Alice M. Batchelder, and Julia S. Gibbons, joined. (dtk)

6/17/03 JUDGMENT : AFFIRMED in part and REVERSED in part . (dtk)

7/9/03 MANDATE ISSUED with no cost taxed [00-1845] (rgf)

* * *

U.S. District Court
for the Eastern District of Michigan (Bay City)
CIVIL DOCKET FOR CASE #: 00-CV-10082
Tesmer, et al v. Granholm, et al
Filed: 03/02/00

* * *

DOCKET PROCEEDINGS

DATE	#	DOCKET ENTRY
3/2/00	1	COMPLAINT - Receipt # 395248 - Date Fee Received: 03/02/00 (bs) [Entry date 03/06/00]
3/2/00	2	MOTION by plaintiffs for preliminary injunction with Exhibits, brief, notice of hearing with date to be set by the court and proof of mailing. (bs) [Entry date 03/06/00]

* * *

3/23/00	6	MOTION by defendants to dismiss (bs) [Entry date 03/23/00]

* * *

3/27/00	13	RESPONSE by plaintiff to motion to dismiss by Lynda L. Heathscott, William A. Crane, John F. Kowalski, Jennifer M. Granholm [6-1] with brief and attachments. (bs) [Entry date 03/29/00]
3/28/00	14	REMARK: Supplemental Authority with Exhibit A filed by plaintiffs. (bs) [Entry date 03/30/00]

* * *

3/31/00	17	MEMORANDUM opinion and order by Judge Victoria A. Roberts granting in part and denying in part motion to dismiss by Lynda L. Heathscott, William A. Crane, John F. Kowalski, Jennifer M. Granholm [6-1], denying motion for preliminary injunction by Michael D. Vogler, Arthur M. Fitzgerald, Alois Schnell, Charles Carter, John Tesmer [2-1] and granting plaintiffs' request for declaratory judgment [EOD Date: 4/4/00] (bs) [Entry date 04/04/00]

* * *

4/14/00	24	MOTION by defendant John F. Kowalski, defendant William A. Crane, defendant Lynda L. Heathscott to stay case with brief, attachments and proof of mailing (jl) [Entry date 04/14/00]

* * *

4/27/00	28	MEMORANDUM by plaintiffs in opposition to motion to stay case by Lynda L. Heathscott, William A. Crane, John F. Kowalski [24-1]; with attachments and proof of mailing. (bs) [Entry date 05/01/00]

* * *

6/20/00	31	ORDER by Judge Victoria A. Roberts denying motion to stay case by Lynda L. Heathscott, William A. Crane, John F. Kowalski [24-1], setting hearing on motion for injunction by Michael D. Vogler, Arthur M. Fitzgerald, Alois Schnell, Charles Carter, John Tesmer [29-1] for 10:00 6/28/00, and setting deadline for plaintiff's supplemental brief for 10:00 6/23/00, setting deadline for defendant's supplemental brief for 10:00 6/26/00 Date 6/22/00] (jl) [Entry date 06/22/00]

* * *

6/30/00	33	MEMORANDUM opinion and order by Judge Victoria A. Roberts granting motion for injunction by Michael D. Vogler, Arthur M. Fitzgerald, Alois Schnell, Charles Carter, John Tesmer [29-1], denying motion to certify class action by Michael D. Vogler, Arthur M. Fitzgerald, Alois Schnell, Charles Carter, John Tesmer [18-1]; with

proof of mailing. [EOD Date: 7/3/00] (bs) [Entry date 07/03/00]

* * *

7/14/00 35 INTERLOCUTORY appeal by defendant Lynda L. Heathscott, defendant William A. Crane, defendant John F. Kowalski of order [33-1] to USCA FEE: paid Receipt # 200 402249 (bs) [Entry date 11/29/01] [Edit date 11/29/01]

* * *

7/18/00 39 INTERLOCUTORY appeal of order [33-1] by the Honorable Dennis C. Kolenda to USCA FEE: paid Receipt # 200 402379 (bs) [Entry date 11/29/01]

* * *

7/8/02 63 SLIP opinion from USCA remanding the case for to have judgment entered in favor of the defendants, injunction issued by the court is dissolved and the declaratory judgment is vacated - appeal case # 00-1824, 00-1845 (bs) [Entry date 07/08/02]

* * *

6/20/03 66 SLIP opinion from USCA affirming in part and reversing in part the decision of the District Court - appeal case # 00-1824/1845 (bs) [Entry date 06/20/03]

* * *

7/14/03 68 MANDATE from USCA affirming the decision of the District Court in part and reversed in part - appeal case # 00-1824 (bs) [Entry date 07/14/03]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JOHN CLIFFORD TESMER, CHARLES CARTER, and ALOIS SCHNELL, on behalf of themselves and all similarly situated individuals, and ARTHUR M. FITZGERALD and MICHAEL D. VOGLER,

Plaintiffs,

v

Case No. 00-10082
Hon. Victoria A. Roberts
Magistrate Judge Binder

JENNIFER M. GRANHOLM, Attorney General of the State of Michigan, in her official capacity; and JUDGE JOHN F. KOWALSKI, JUDGE WILLIAM A CRANE and JUDGE LYNDA L. HEATHSCOTT, in their official capacity, individually and as representative of a class of similarly situated circuit court judges,

Defendants.

_____/

COMPLAINT

Plaintiffs, by and through their undersigned attorneys, bring this complaint against the above-named Defendants, their employees, agents, and successors in office and, in support thereof, state the following upon information and belief:

INTRODUCTORY STATEMENT

1. This civil rights action, arising under 42 U.S.C. §1983, challenges the constitutionality of the practice of denying indigent defendants who have pleaded guilty or nolo contendere in Michigan courts the right to appointed appellate counsel. This practice of denying appointed appellate counsel to indigents who have pleaded guilty or nolo contendere has also been recently codified by the enactment of P.A. 1999, No. 200, an act which is scheduled to take effect on April 1, 2000.

2. Plaintiffs seek declaratory and injunctive relief against both the existing practice in some Michigan courts and the practice which will take effect statewide on April 1, 2000 under P.A. 1999, No. 200.

JURISDICTION AND VENUE

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1342(a)(3), and 1343(a)(4).

4. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202 and by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

5. Venue is appropriate under 28 U.S.C. § 1392(b) because a substantial part of the events or omissions giving rise to the claim occurred in this district.

PARTIES

6. Plaintiff John Clifford Tesmer is a resident of the County of Alcona who is presently incarcerated in the Saginaw Correctional Facility. He brings this suit on behalf of himself and all other persons similarly situated.

7. Plaintiff Charles Carter is a resident of the County of Saginaw who is presently incarcerated at the State Prison of

Southern Michigan. He brings this suit on behalf of himself and all other persons similarly situated.

8. Plaintiff Alois Schnell is a resident of the County of Saginaw who is presently incarcerated at the Cotton Correctional Facility. He brings this suit on behalf of himself and all other persons similarly situated.

9. Plaintiff Arthur M. Fitzgerald is an attorney licensed to practice law in the State of Michigan. Mr. Fitzgerald's principal place of business is located in Bay County, Michigan.

10. Plaintiff Michael D. Vogler is an attorney licensed to practice law in the State of Michigan. Mr. Vogler's principal place of business is located in Presque Isle County, Michigan.

11. Defendant Jennifer M. Granholm is the Attorney General of the State of Michigan. She will be responsible for the enforcement of P.A. 1999, No. 200. Defendant Granholm is sued herein in her official capacity, as are her successors.

12. Defendant John F. Kowalski is a judge of the State of Michigan's 26th Circuit Court. He is being sued herein in his official capacity and as a class representative of all circuit court judges in the State of Michigan.

13. Defendant William A. Crane is a judge of the State of Michigan's 10th Circuit Court. He is being sued herein in his official capacity and as a class representative of all circuit court judges in the State of Michigan.

14. Defendant Lynda L. Heathscott is a judge of the State of Michigan's 10th Circuit Court. She is being sued herein in her official capacity and as a class representative of all circuit court judges in the State of Michigan.

FACTUAL BACKGROUND

15.In November 1994, article 1, §20 of the Michigan Constitution was amended to provide that the first direct appeal from a plea-based felony conviction would be by application for leave to appeal filed in the Michigan Court of Appeals.

16. The 1994 amendment to article 1, §20 of the Michigan Constitution changed the procedure for initial appeals of a plea-based felony conviction from appeals of right to appeals only by leave of the Court of Appeals.

17. The 1994 amendment of article 1, §20 of the Michigan Constitution did not address the appointment of counsel by which indigents who had pleaded guilty or nolo contendere to felony charges could challenge their convictions or sentences.

18. Some time after the 1994 amendment of article 1, §20 of the Michigan Constitution, a number of circuit court judges, particularly the judges of the 10th Circuit Court in Saginaw, began routinely denying requests filed by indigent defendants for the appointment of appellate counsel to prepare applications for leave to appeal in the Michigan Court of Appeals to challenge plea-based convictions and sentences.

19. Plaintiff John Clifford Tesmer is an indigent who pleaded guilty in 1999 to a charge of home invasion in the 26th Circuit Court in Alcona.

20. Judge John F. Kowalski sentenced Mr. Tesmer to a period of incarceration of between 9 and 15 years based on his plea of guilty to the home invasion charge.

21. Within 42 days of the date of his sentencing, Mr. Tesmer presented a written request to Judge Kowalski for the appointment of an appellate attorney to prepare an application for leave to appeal in the Michigan Court of Appeals from his plea-based conviction.

22. On September 7, 1999, Judge Kowalski denied Mr. Tesmer's request for appointed appellate counsel.

23. Plaintiff Charles Carter is an indigent who pleaded guilty in 1999 to a charge of attempted murder in the 10th Circuit Court in Saginaw.

24. Judge William A. Crane sentenced Mr. Carter to life imprisonment based on his plea of guilty to the attempted murder charge.

25. Within 42 days of the date of his sentencing, Mr. Carter presented a written request to Judge Crane for the appointment of an appellate attorney to prepare an application for leave to appeal in the Michigan Court of Appeals from his plea-based conviction.

26. On May 12, 1999, Judge Crane denied Mr. Carter's request for appointed appellate counsel.

27. Plaintiff Alois Schnell is an indigent who pleaded guilty in 1998 to the charge of operating a vehicle under the influence of liquor (OUIL), third offense.

28. Judge Lynda L. Heathscott sentenced Mr. Schnell to a period of incarceration of between five and ten years based on his plea of guilty to the OUIL charge.

29. Within 42 days of the date of his sentencing, Mr. Schnell presented a written request to Judge Heathscott for the appointment of an appellate attorney to prepare an application for leave to appeal in the Michigan Court of Appeals from his plea-based conviction.

30. On September 21, 1998, Judge Heathscott denied Mr. Schnell's request for appointed appellate counsel.

31. In December 1999, P.A. 1999, No. 200 was signed into law. This act, which amends provisions of Michigan's Code of Criminal Procedure, takes effect on April 1, 2000.

32. Under P.A. 1999, No. 200, an indigent who pleads guilty or nolo contendere to a felony charge has the right to appointed counsel to file an application for leave to appeal in only a limited number of circumstances. P.A. 1999, No. 200 also prohibits circuit court judges from appointing counsel to indigent defendants in most cases in which these defendants have pleaded guilty or nolo contendere.

33. Plaintiff Arthur M. Fitzgerald earns a portion of his income as an attorney taking assigned appeals from trial and plea based convictions. Mr. Fitzgerald is on a list of attorneys qualified to take such assignments arising out of the State of Michigan's 10th Circuit Court.

34. Plaintiff Michael D. Vogler earns a portion of his income as an attorney taking assigned appeals from trial and plea based convictions. Mr. Vogler is on a list of attorneys qualified to take such assignments arising out of the State of Michigan's 26th Circuit Court.

35. The present practice in several Michigan courts of routinely denying requests for appointment of appellate counsel made by indigent defendants who have pleaded guilty or nolo contendere has adversely affected the incomes of Mr. Fitzgerald and Mr. Vogler in that it has reduced the number of cases in which they could be appointed and paid as assigned appellate counsel.

36. The operation of P.A. 1999, No. 200 will adversely affect the incomes of Mr. Fitzgerald and Mr. Vogler in that it will reduce the number of cases in which they could be appointed and paid as assigned appellate counsel.

37. Mr. Fitzgerald and Mr. Vogler also assert, under the doctrine of *jus tertii*, the constitutional rights of the indigent criminal defendants who will plead guilty or nolo contendere after April 1, 2000, and who will request, but be denied, the appointment of appellate counsel, based on the operation of P.A. 1999, No. 200.

FIRST CLAIM FOR RELIEF

38. Plaintiffs incorporate by reference all of he allegations contained above as though stated in full herein.

39. Defendants Kowalski, Crane and Heathscott violated Plaintiffs' rights to due process and equal protection rights as guaranteed by the United States Constitution when they denied Plaintiffs and all similarly situated individuals the right to the appointment of appellate counsel to prepare an original appeal from their plea-based convictions.

40. Defendants Kowalski, Crane and Heathscott took the aforementioned actions denying the constitutional rights of the Plaintiffs and all similarly situated individuals while acting under color of state law.

41. Plaintiffs seek redress for the Defendants' violation of federal constitutional rights pursuant to the federal civil rights act, 42 U.S.C. §1983.

SECOND CLAIM FOR RELIEF

42. Plaintiffs incorporate by reference all of the allegations contained above as though stated in full herein.

43. By denying indigent defendants the right to appointed appellate counsel to process their initial appeal, P.A. 1999, No 200 will violate due process and equal protection rights guaranteed by the United States Constitution.

44. The violations of federal constitutional rights described in the preceding paragraph will result from actions taken under color of state law.

45. Plaintiffs seek redress for the violation of federal constitutional rights caused by the operation of P.A. 1999, No. 200 pursuant to the federal civil rights act, 42 U.S.C. §1983.

CLASS ALLEGATIONS

46. The Plaintiff class consists of all indigent Defendants who have pleaded or will plead guilty or nolo contendere to a felony in a Michigan court and who filed or will file a request for the appointment of appellate counsel which was or will be denied by a circuit court judge.

47. This proposed class meets the requirements of F.R.C.P. 23(a) and (b) because:

A. The class is so numerous that joinder of all members is impracticable, there are questions of law and fact common to the class, the claims of the representative parties are typical of the claims of the class, and the representative parties will adequately protect the interests of the class.

B. The prosecution of separate actions by individual members of the class would create a risk of varying adjudications or adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the Defendants.

C. The parties opposing the class have in refusing to appoint appellate counsel, acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

48. The Defendant class consists of all Michigan circuit court judges and their successors.

49. This proposed Defendant class meets the requirements of F.R.C.P. 23(a) and (b) because:

A. The class is so numerous that joinder of all members is impracticable, there are questions of law and fact common to the class, the claims against the representative parties are typical of the claims against the class as a whole, and the representative parties will adequately protect the interests of the class.

B. The prosecution of separate actions against individual members of the class would create a risk of varying adjudications or adjudications with respect to individual members of the class which would establish incompatible standards of conduct for parties opposing the class.

C. The named class representatives, in refusing to appoint appellate counsel, acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

RELIEF REQUESTED

WHEREFORE, Plaintiffs ask this Court to do the following:

A. Issue an order declaring that the practice of Defendants Kowalski, Crane, Heathscott and other similarly situated circuit court judges, denying individuals who have pleaded guilty or nolo contendere the right to appointed appellate counsel to handle an initial appeal, violates the United States Constitution;

B. Issue a temporary restraining order, a preliminary injunction and a permanent injunction restraining the Defendants, and all other members of the Defendant class, as well as their employees, agents, and successors from violating the federal constitutional rights of Plaintiffs and the Plaintiff class;

C. Issue an order declaring that P.A. 1999, No. 200 violates the United States Constitution;

D. Issue a temporary restraining order, a preliminary injunction and a permanent injunction enjoining the enforcement of P.A. 1999, No. 200;

E. Issue an order specifying that Plaintiffs and the members of the Plaintiff class shall be provided appointed counsel to file an application for leave to appeal to the Michigan Court of Appeals and that the Court of Appeals must accept any application for leave to appeal filed by Plaintiffs' appointed counsel for filing and

must give full consideration to that application;

F. Issue an order awarding Plaintiffs their reasonable attorney fees and costs;

G. Issue other orders awarding Plaintiffs any other relief to which they may be entitled.

/S/
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Attorneys for Plaintiff

Dated: March 1, 2000

Court of Appeals, State of Michigan

ORDER

People of MI v Christopher Lee Cascagnett

Docket No. 218806

LC No.98-007505 FH

Donald E. Holbrook, Jr.
Presiding Judge
Kathleen Jansen
E. Thomas Fitzgerald
Judges

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

/S/
Donald E. Holbrook, Jr.

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

[Court seal omitted in printing.]

June 10, 1999
Date

/S/
Chief Clerk

Court of Appeals, State of Michigan

ORDER

People of MI v PAULA DENISE GOREE

Docket No. 219224

LC No.95-004818 FH; 96-005979 FH

Michael R. Smolenski
Presiding Judge
David H. Sawyer
Janet T. Neff
Judges

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

/S/
Michael R. Smolenski

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

[Court seal omitted in printing]

July 27, 1999
Date

/S/
Chief Clerk

Court of Appeals, State of Michigan

ORDER

People of MI v Mark Owen Wade

Docket No. 221156

LC No.980000336 FC

Peter D. O'Connell
Presiding Judge
Kathleen Jansen
Henry William Saad
Judges

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

/S/
Peter D. O'Connell

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

[Court Seal omitted in printing.]

September 2, 1999
Date

/S/
Chief Clerk

Court of Appeals, State of Michigan

ORDER

People of MI v Matthew Davis Harton

Docket No. 221550

LC No.97-020389 FC

Stephen J. Markman
Presiding Judge
E. Thomas Fitzgerald
Hilda R. Gage
Judges

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

/S/
Stephen Markman

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

[Court Seal omitted in printing.]

September 29, 1999
Date

/S/
Chief Clerk

Court of Appeals, State of Michigan

ORDER

People of MI v Steven Duane Clark

Docket No. 22388

LC No.97-408635-FH

Richard Allen Griffin
Presiding Judge
Peter D. O'Connell
Donald S. Owens
Judges

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

/S/
Richard Allen Griffin
Presiding Judge

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

[Court seal omitted in printing.]

February 23, 2000
Date

/S/
Chief Clerk

Court of Appeals, State of Michigan

ORDER

People of MI v Jimmie Lee Montgomery

Docket No. 224038

LC No.98-9216

Helen N. White
Presiding Judge
Michael T. Talbot
Jeffrey G. Collins
Judges

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

/S/
Helen N. White

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

[Court seal omitted in printing.]

February 28, 2000
Date

/S/
Chief Clerk

[Original Document Handwritten]

DECLARATION OF CHARLES CARTER

I do not have a lawyer to represent me for free.

2. I have not filed an appeal because I cannot afford a lawyer.

3. I do not know how to represent myself.

4. I don't know the law and I don't have any one to help me.

5. I made it to the 10th grade, I had special ed reading class.

6. My family can not hire a lawyer for me.

7. I was sentence to Life for atemted murder.

Charles Carter Date 3-26-2000

AFFIDAVIT

Terence R. Flanagan, being first duly sworn, states that he has personal knowledge of the facts contained herein and that, if called as a witness to testify at trial or hearing in this matter, would be competent to testify to and would testify as follows.

1. I am the Administrator of the Michigan Appellate Assigned Counsel System (MAACS), the state agency which oversees the appointment of assigned counsel to represent indigent defendants in appeals in the Michigan state courts.

2. That each circuit court provides MAACS with copies of orders granting the appointment of appellate counsel in either trial or plea-based appeals. Courts are also supposed to provide MAACS with copies of orders denying counsel in such appeals but Saginaw Circuit does not. Information concerning denials of counsel in plea-based appeals from Saginaw has been received from the defendants involved who contacted MAACS, not from the Saginaw Circuit directly.

3. That in the period from January 1-December 31, 1999, MAACS received copies of 1,892 orders from circuit judges appointing appellate counsel in plea-based appeals. MAACS also received copies of 165 orders from circuit judges and/or defendants, including five from Saginaw (James Morrison, Charles Carter, Joseph Boatman, Vincent Kinsel and Calvin Jackson) denying counsel in plea-based appeals.

4. That, according to the information provided by Saginaw Circuit to MAACS, the rate of pay for attorneys on a plea-based appeal is $350, plus $100 for conducting an interview with the defendant at a prison. Expenses are included. This fee was set in 1985 and, to my knowledge, has not changed.

/S/
Terence R. Flanagan

Subscribed and sworn to before me
April 21, 2000

/s/
Judy A. Miller
Notary Public, Ionia County
Acting in Ingham County
My Commission expires: 07/21/2000

Michigan Court Rules.

MCR 6.425 Sentencing; Appointment of Appellate Counsel
(A) Presentence Report; Contents. Prior to sentencing, the probation officer must investigate the defendant's background and character, verify material information, and report in writing the results of the investigation to the court. The report must be succinct and, depending on the circumstances, include:
(1) a description of the defendant's prior criminal convictions and juvenile adjudications,
(2) a complete description of the offense and the circumstances surrounding it,
(3) a brief description of the defendant's vocational background and work history, including military record and present employment status,
(4) a brief social history of the defendant, including marital status, financial status, length of residence in the community, educational background, and other pertinent data,
(5) the defendant's medical history, substance abuse history, if any, and, if indicated, a current psychological or psychiatric report,
(6) information concerning the financial, social, psychological, or physical harm suffered by any victim of the offense, including the restitution needs of the victim,
(7) if provided and requested by the victim, a written victim's impact statement as provided by law,
(8) any statement the defendant wishes to make,
(9) a statement prepared by the prosecutor on the applicability of any consecutive sentencing provision,
(10) an evaluation of and prognosis for the defendant's adjustment in the community based on factual information in the report,
(11) a specific recommendation for disposition, and
(12) any other information that may aid the court in sentencing.
Regardless of the sentence imposed, the court must have a copy of the presentence report and of any psychiatric report sent to the Department of Corrections. If the defendant is

sentenced to prison, the copies must be sent with the commitment papers.
(B) Presentence Report; Disclosure Before Sentencing. The court must permit the prosecutor, the defendant's lawyer, and the defendant to review the presentence report at a reasonable time before the day of sentencing. The court may exempt from disclosure information or diagnostic opinion that might seriously disrupt a program of rehabilitation and sources of information that have been obtained on a promise of confidentiality. When part of the report is not disclosed, the court must inform the parties that information has not been disclosed and state on the record the reasons for nondisclosure. To the extent it can do so without defeating the purpose of nondisclosure, the court also must provide the parties with a written or oral summary of the nondisclosed information and give them an opportunity to comment on it. The court must have the information exempted from disclosure specifically noted in the report. The court's decision to exempt part of the report from disclosure is subject to appellate review.
(C) Presentence Report; Disclosure After Sentencing. After sentencing, the court, on written request, must provide the prosecutor, the defendant's lawyer, or the defendant not represented by a lawyer, with a copy of the presentence report and any attachments to it. The court must exempt from disclosure any information the sentencing court exempted from disclosure pursuant to subrule (B).
(D) Imposition of Sentence.
(1) Sentencing Guidelines. The court must use the sentencing guidelines, as provided by law. Not later than the date of sentencing, the court must complete a sentencing information report on a form to be prescribed by and returned to the state court administrator.
(2) Sentencing Procedure. The court must sentence the defendant within a reasonably prompt time after the plea or verdict unless the court delays sentencing as provided by law. At sentencing the court, complying on the record, must:

(a) determine that the defendant, the defendant's lawyer, and the prosecutor have had an opportunity to read and discuss the presentence report,
(b) give each party an opportunity to explain, or challenge the accuracy or relevancy of, any information in the presentence report, and resolve any challenges in accordance with the procedure set forth in subrule (D)(3),
(c) give the defendant, the defendant's lawyer, the prosecutor, and the victim an opportunity to advise the court of any circumstances they believe the court should consider in imposing sentence,
(d) state the sentence being imposed, including the minimum and maximum sentence if applicable, together with any credit for time served to which the defendant is entitled,
(e) articulate its reasons for imposing the sentence given, and
(f) if a victim of the crime has suffered harm and the court does not order restitution as provided by law or orders only partial restitution, state the reasons for its action.
(3) Resolution of Challenges. If any information in the presentence report is challenged, the court must make a finding with respect to the challenge or determine that a finding is unnecessary because it will not take the challenged information into account in sentencing. If the court finds merit in the challenge or determines that it will not take the challenged information into account in sentencing, it must direct the probation officer to
(a) correct or delete the challenged information in the report, whichever is appropriate, and
(b) provide defendant's lawyer with an opportunity to review the corrected report before it is sent to the Department of Corrections.
(E) Advice Concerning the Right to Appeal; Appointment of Counsel.
(1) In a case involving a conviction following a trial, immediately after imposing sentence, the court must advise the defendant, on the record, that

(a) the defendant is entitled to appellate review of the conviction and sentence,
(b) if the defendant is financially unable to retain a lawyer, the court will appoint a lawyer to represent the defendant on appeal, and
(c) the request for a lawyer must be made within 42 days after sentencing.
(2) In a case involving a conviction following a plea of guilty or nolo contendere, immediately after imposing sentence, the court must advise the defendant, on the record, that
(a) the defendant is entitled to file an application for leave to appeal;
(b) if the defendant is financially unable to retain a lawyer, the court must appoint a lawyer to represent the defendant on appeal if
(i) the defendant's sentence exceeds the upper limit of the minimum sentence range of the applicable sentencing guidelines,
(ii) the defendant seeks leave to appeal a conditional plea under MCR 6.301(C)(2),
(iii) the prosecuting attorney seeks leave to appeal, or
(iv) the Court of Appeals or the Supreme Court grants the defendant's application for leave to appeal;
(c) if the defendant is financially unable to retain a lawyer, the court, in its discretion, may appoint a lawyer to represent the defendant on appeal if all the following apply:
(i) the defendant seeks leave to appeal on the basis of an alleged improper scoring of an offense variable or a prior record variable,
(ii) the defendant objected to the scoring or otherwise preserved the matter for appeal, and
(iii) the sentence constitutes an upward departure from the upper limit of the minimum sentence range that the defendant alleges should have been scored; and
(d) the request for a lawyer must be made within 42 days after sentencing, unless the entitlement to counsel arises under (b)(iii) or (iv).

With regard to paragraphs (b) and (c), the court is required to give only the advice that is applicable to the particular circumstances.
Upon sentencing, the court shall give the defendant a form developed by the State Court Administrative Office that the defendant may complete and file as an application for leave to appeal.
(3) The court also must give the defendant a request for counsel form containing an instruction informing the defendant that the form must be completed and returned to the court within 42 days after sentencing if the defendant wants the court to appoint a lawyer. The 42-day time limit does not apply if the entitlement to counsel arises under subrule (2)(b)(iii) or (iv).
(4) When imposing sentence in a case in which sentencing guidelines enacted in 1998 PA 317, MCL 777.1 *et seq.*, are applicable, if the court imposes a minimum sentence that is longer or more severe than the range provided by the sentencing guidelines, the court must advise the defendant on the record and in writing that the defendant may seek appellate review of the sentence, by right if the conviction followed trial or by application if the conviction entered by plea, on the ground that it is longer or more severe than the range provided by the sentencing guidelines.
(F) Appointment of Lawyer; Trial Court Responsibilities in Connection with Appeal.
(1) Appointment of Lawyer.
(a) Unless there is a postjudgment motion pending, the court must rule on a defendant's request for a lawyer within 14 days after receiving it. If there is a postjudgment motion pending, the court must rule on the request after the court's disposition of the pending motion and within 14 days after that disposition.
(b) In a case involving a conviction following a trial, if the defendant is indigent, the court must enter an order appointing a lawyer if the request is filed within 42 days after sentencing or within the time for filing an appeal of right. The court should liberally grant an untimely request as long as the defendant may file an application for leave to appeal.

(c) Scope of Appellate Lawyer's Responsibilities. The responsibilities of the appellate lawyer appointed to represent the defendant include representing the defendant
(i) in available postconviction proceedings in the trial court the lawyer deems appropriate,
(ii) in postconviction proceedings in the Court of Appeals,
(iii) in available proceedings in the trial court the lawyer deems appropriate under MCR 7.208(B) or 7.211(C)(1), and
(iv) as appellee in relation to any postconviction appeal taken by the prosecutor.
(2) Order to Prepare Transcript. The appointment order also must
(a) direct the court reporter to prepare and file, within the time limits specified in MCR 7.210,
(i) the trial or plea proceeding transcript,
(ii) the sentencing transcript, and
(iii) such transcripts of other proceedings, not previously transcribed, that the court directs or the parties request, and
(b) provide for the payment of the reporter's fees.
The court must promptly serve a copy of the order on the prosecutor, the defendant, the appointed lawyer, the court reporter, and the Michigan Appellate Assigned Counsel System.
(3) Order as Claim of Appeal; Trial Cases. In a case involving a conviction following a trial, if the defendant's request for a lawyer, timely or not, was made within the time for filing a claim of appeal, the order described in (F)(1) and (2) must be entered on a form approved by the State Court Administrator's Office, entitled "Claim of Appeal and Appointment of Counsel," and the court must immediately send to the Court of Appeals a copy of the order and a copy of the judgment being appealed. The court also must file in the Court of Appeals proof of having made service of the order as required in subrule (F)(2). Entry of the order by the trial court pursuant to this subrule constitutes a timely filed claim of appeal for the purposes of MCR 7.204.
(Current as of 1/01/2004)

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